In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-272

SEMINOLE NATION OF OKLAHOMA, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

1. Petitioner filed a complaint in the Indian Claims Commission seeking judgment against the United States for one-half of all mineral "royalties"[1] recovered from the area encompassed within the former Seminole Reservation established by the Treaty of March 21, 1866, 14 Stat. 755. These royalties had previously been paid to individual Seminole allottees, or their legal transferees, pursuant to the terms of the agreement reached between the Seminole Tribe and Commissioners of the United States in 1897,[2] ratified by Congress in the Act of July 1, 1898, 30 Stat. 567, and implemented by a series of statutes, particularly

[1]The term "royalties" is apparently used in the general sense of income from the production of minerals.

[2]The agreement was negotiated by the Commission to the Five Civilized Tribes, commonly called the Dawes Commission. This Court has had occasion to consider the history of the Dawes Commission in detail. See, *e.g.*, *Heckman* v. *United States*, 224 U.S. 413; *Mullen* v. *United States*, 224 U.S. 448; *Goat* v. *United States*, 224 U.S. 458; *Woodward* v. *DeGraffenried*, 238 U.S. 284.

the Act of March 3, 1903, 32 Stat. 1008; Act of April 21, 1904, 33 Stat. 189; Res. 7 of March 2, 1906, 34 Stat. 822; Act of April 26, 1906, 34 Stat. 137; and the Act of May 27, 1908, 35 Stat. 312. Petitioner contends that the Seminole Agreement, as ratified, reserved to the Tribe—rather than to individual Seminoles to whom the tribal land was allotted in fee—a one-half interest in any minerals derived from land within the original Seminole Reservation. Therefore, petitioner contends, the Act of May 27, 1908, which directed that all such royalties be paid to the individual Seminole allottees or their transferees, was inconsistent with the intent of the Seminole Agreement and "unfair and dishonorable" within the meaning of Clause 5 of the Indian Claims Commission Act (25 U.S.C. 70a).

On June 24, 1966, the Commission decided that the motive of the Commissioner of Indian Affairs, in allegedly advocating enactment of the Act of May 27, 1908, *supra*, might be the basis for a cause of action under Clause 5 of the Act, and that the case should proceed "on the assumption that if a justiciable controversy exists, the plaintiff will undertake to establish a viable theory of recovery and measure of damages at some future date."[3]

After presentation of evidence, the Commission found that no minerals had been produced in paying quantity prior to the enactment of the Act of May 27, 1908, which clearly called for payment to allottees, and dismissed the complaint for failure to state a claim upon which relief could be granted under any clause of the Indian Claims Commission Act.[4] On petitioner's appeal, the Court of

---

[3]Pet. App. C 65; 17 Ind. Cl. Comm. 67, 82-83.

[4]Pet. App. B 18-46; 28 Ind. Cl. Comm. 117, rehearing denied, Pet. App. B 47; 29 Ind. Cl. Comm. 421. Two commissioners dissented. While expressly repudiating the "improper motive" theory which was the focal point of the Commission's 1966 speculation, the dissenting commissioners would have allowed the case to remain on the docket for further proof of possible damage. The dissenters thought that the 1908 statute was inconsistent with the intent (though, apparently, not the language) of the 1898 Seminole Agreement. Pet. App. B 32-36; 28 Ind. Cl. Comm. 117, 132-136.

Claims unanimously affirmed the dismissal (498 F. 2d 1368; Pet. App. A 1-17).

Both the Commission and the Court of Claims held that:

(1) the overriding purpose of the Seminole Agreement was to allot all Seminole tribal land to individual members of the tribe on an equal basis. To this end, "the parties went to great lengths to insure that the allotments to individual Indians would be as equal as possible * * *" (Pet. App. A 4);

(2) in order to effectuate this goal, the agreement provided that any Seminole tribal lands known to contain minerals were not to be allotted to any individual. Rather, they were to be sold prior to allotment "and the proceeds from such sales were [to be] paid into the tribal treasury for eventual per capita distribution * * *" (*ibid.*);

(3) to provide for the contingency of unexpected mineral discovery on allotted lands between the time allotment sites were selected and the time allotment deeds were issued,[5] the agreement included an "equalization clause" which would operate, if at all, to prevent a few allottees from obtaining, by fortuity, an allotment which had greater value at the time deeds were issued than it possessed at the time of site selection. The clause provided for payments "into the tribal treasury until extinguishment of tribal government * * * [to]be used for the purpose of equalizing the value of allotments * * * so that each allotment may be made equal in value as aforesaid * * *" (30 Stat. 567, 568);

---

[5]The deed conveyed to each allottee "* * * all the right, title, and interest * * * in and to the lands * * *" and was "* * * a guarantee by the United States of the title of said lands to the allottee * * *." 30 Stat. 567, 568.

(4) the process of issuing allotment deeds being substantially completed by 1908, Congress chose a "date certain" (July 1, 1908) after which all royalties arising from mineral production on allotted land were to be paid to the United States "for the benefit of the Indian lessor or his proper representative to whom such royalties shall thereafter belong * * *" (Act of May 27, 1908, 35 Stat. 312, 316);

(5) the 1908 statute was consistent with the intent of the Seminole Agreement to vest fee simple title to all allotted land in the allottees;

(6) the subsequent statutes and agreements affirm that the 1898 Agreement vested no mineral interest in the Tribe;

(7) petitioner has therefore failed to show any damages or basis for relief.

2. The opinions below, upon which we rely, are thorough and correct in their resolution of the narrow question of statutory construction here presented. Further review by this Court is not warranted.

a. Contrary to petitioner's unsupported claim, the decisions below are in accord with the uniform course of federal judicial and administrative construction of the particular statutory clause at issue in this case. The language and intent of the relevant clause of the Seminole Agreement has been similarly construed by the Court of Appeals for the Tenth Circuit twice, *Moore* v. *Carter Oil Company,* 43 F.2d 322, certiorari denied, 282 U.S. 903; *Fish* v. *Wise,* 52 F.2d 544, certiorari denied, 284 U.S. 688; and by the Attorney General, 35 Op. A.G. 421. And the Tenth Circuit's opinions in *Moore* and *Fish* in turn relied on this Court's prior decisions in *Goat* v. *United States,* 224 U.S. 458, which examined in detail another important

statute (the Act of April 26, 1906, 34 Stat. 137) implementing the Seminole Agreement of 1898, and on *Woodward* v. *DeGraffenried,* 238 U.S. 284.[6]

All of these decisions were properly relied upon by the Commission and the Court of Claims here. And there is no support in any of these opinions or in any other authority for petitioner's contention that the Seminole Agreement either legally or morally reserved rights in the mineral estate to the Tribe, rather than transmitting them, in fee, to the individual Seminole allottees.

b. The decisions below, contrary to petitioner's argument (Pet. 4, 34), do not conflict with this Court's recent decision in *United States* v. *Jim,* 409 U.S. 80. That case involved only a change in the "pattern of distribution" (409 U.S. at 82) of benefits derived from income generated by assets held on behalf of the tribe. The decision in no way questions the settled proposition that when Congress elects to do so, as it did here, it is empowered to transmute tribal property (by means of the allotment process) to holdings of the individual tribal members. Compare *United States* v. *Jim,* 409 U.S. 80, 82, with *Seminole Nation* v. *United States,* 316 U.S. 286, 295-296, and *Woodward* v. *DeGraffenried, supra,* 238 U.S. at 306-307.

---

[6]In *Goat,* the Court held that after the Act of April 26, 1906, became law, all Seminole allottees "* * * stood in precisely the same position * * * as though they had received their allotments without any restriction upon their right to alienate the interest thus acquired." 224 U.S. at 468-469. In *Woodward,* the Court emphasized the differences between allotments of Seminole tribal lands under the Seminole Agreement of 1898 and allotments involving other Oklahoma tribes made pursuant to the Curtis Act (Act of June 28, 1898, 30 Stat. 495). 238 U.S. at 306-307.

As the Court of Claims here held, the Seminole Agreement "established an express trust with the tribal government as trustee and the individual allottees as beneficiaries" and "[n]o rights vested in the tribal government, only duties" (Pet. App. A 15). Petitioner's claim (Pet. 34-36) that this holding conflicts with prior decisions of this Court is without foundation. Petitioner itself brought the earlier suit which led to this Court's express holding that the Seminole tribal government was the trustee for funds received under the 1898 Seminole Agreement. *Seminole Nation* v. *United States, supra*, 316 U.S. at 296. The United States was held to be only "a third party" (*ibid.*), and the case was remanded to the Court of Claims to ascertain whether the Tribe was acting in disregard of its fiduciary responsibilities to the individual Seminoles who were beneficiaries of the trust created by the Seminole Agreement.[7]

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

JANUARY 1975.

---

[7]On remand, the Court of Claims held that neither the Tribe nor the United States had abused its trust and dismissed the claim for failure of proof. *Seminole Nation* v. *United States*, 102 Ct. Cl. 565, certiorari denied, 326 U.S. 719-720.